



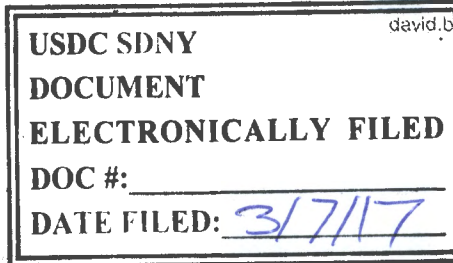
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March 7, 2017

Via Fax: (212) 805-6382  
The Honorable Victor Marrero  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312



Re: *CaféX Communications, Inc. v. Amazon Web Services, Inc.*  
SDNY Case No. 1:17-cv-01349-VM

Dear Judge Marrero:

Plaintiff CaféX writes in response to Defendant AWS's March 6, 2017 letter brief requesting an extension of the briefing schedule on CaféX's motion for a preliminary injunction by order to show cause.

Defendant AWS omits several facts in its letter. First, AWS argues that "CaféX did not even serve Amazon with the complaint until Friday March 3." (emphasis in original) AWS omits, however, that CaféX emailed AWS's in-house counsel a courtesy copy of the complaint two days earlier, on March 1. See ECF No. 10-2. Indeed, the parties' counsel began attempting to work out a briefing schedule by telephone on March 1. CaféX's counsel also emailed AWS's counsel a copy of its preliminary injunctions papers immediately after filing them on March 2. In addition, AWS notably does not make any representation regarding when it first received a copy of the complaint. CaféX cannot know with certainty, but most likely, AWS learned of the lawsuit within hours of its February 22 filing in light of docket monitoring services that result in lawyers contacting their clients shortly after their being sued and in light of the attention this lawsuit immediately received in the industry press (see, e.g., <http://www.geekwire.com/2017/chime-amazon-sued-name-new-online-conferencing-technology/> dated February 22, 2017).

AWS also purports to set forth an account of the parties' attempt to agree on a briefing schedule. However, it omits the fact that CaféX initially proposed a schedule almost identical to the one ordered by the Court: AWS's response to be due on March 13 at noon, reply due at 9 am

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on March 17. CaféX rejected that proposal and requested instead that its response be due on March 20 or 21 and AWS's reply be due on March 23. CaféX explained to AWS that it was neither fair nor workable for it to have 2.5 weeks for its response papers, AWS to have 2 or 3 days for its reply, and the Court to have merely 1 day to consider the papers before the hearing. See Ex. 1 (attached) at 2. CaféX attempted to compromise, proposing March 15 for AWS's response papers and March 21 for CaféX's reply, but AWS rejected that proposal too. Once again AWS counterproposed a disproportionate schedule that also gave the Court little time to consider the papers: Friday March 17 midnight for AWS's response, and Wednesday March 22 5 pm for CaféX's reply. At that point, CaféX told AWS that the parties were apparently not going to be able to reach agreement and that it would so notify the Court's clerk. See Ex. 1 at 1.

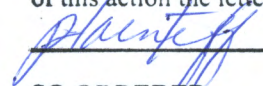
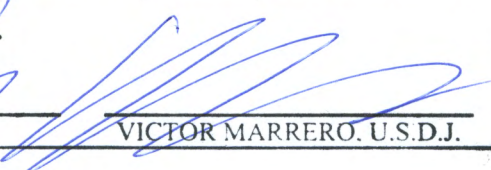
The schedule subsequently ordered by the Court divides the time available to complete the briefing in a fair proportion between the parties. Plaintiff CaféX respectfully requests the Court to deny AWS's motion to extend the schedule to its benefit, providing it with disproportionate briefing time and shortening the Court's time to consider the papers.

Respectfully submitted,

AKERMAN LLP

  
 David Brafman

cc: Justin A. Nelson, Esq. (Via Fax and Email)  
 Lucas E. Issacharoff, Esq. (Via Fax and Email)

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by	
	
<b>SO ORDERED.</b>	
3-7-17	
DATE	VICTOR MARRERO, U.S.D.J.

# EXHIBIT 1

**Brafman, David (Ptrn-WPB)**

**From:** Brafman, David (Ptrn-WPB)  
**Sent:** Friday, March 03, 2017 10:59 AM  
**To:** 'Justin A. Nelson'  
**Cc:** Passler, Mark (Ptrn-WPB); Carlson, Patti (Ptrn-WPB)  
**Subject:** RE: CafeX v. AWS

Thank you for your email. We find your proposed schedule to be unreasonable for the same reasons we articulated regarding your first counterproposal. It seems like we will need to let the Court decide. The Court's Clerk told us when the hearing was scheduled that if the parties were unable to agree on a schedule, we could have a teleconference with the Court on the issue on Monday. We will contact the Clerk to request that such a call be arranged.

Regarding your request for expedited document discovery, we did not have or need any document discovery for our papers, and see no need for AWS to have any. Of course, if you seek it and the Court orders such expedited document discovery, we will request reciprocal discovery.

Regarding the deposition request, we will get back to you later today.

Very truly yours,  
 David

**David Brafman**  
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 david.brafman@akerman.com

**From:** Justin A. Nelson [mailto:jnelson@SusmanGodfrey.com]  
**Sent:** Thursday, March 02, 2017 6:37 PM  
**To:** Brafman, David (Ptrn-WPB)  
**Cc:** Passler, Mark (Ptrn-WPB)  
**Subject:** RE: CafeX v. AWS

David - Thank you for your email. We propose:

Our Response -- Saturday March 18 at 7 pm  
 Your Reply -- Wednesday March 22 at 12 pm

Note this is the same amount of time between the response and reply that you originally proposed. Also note that we will be propounding some discovery by tomorrow at noon. We expect you to produce those documents by COB on Tuesday. In addition, we intend to depose Mr. Solito and need a date the week of March 13 no later than March 15. We reserve the right to ask for other depositions once we see your documents. We believe this offer addresses any scheduling concerns you may have, especially since we have agreed to your gap between the response and reply. If we cannot agree to the briefing schedule and the discovery timeline, let's set up a call with the court to discuss these and any other issues.

Best Regards,

Justin

**From:** david.brafman@akerman.com [mailto:david.brafman@akerman.com]  
**Sent:** Thursday, March 02, 2017 2:35 PM  
**To:** Justin A. Nelson  
**Cc:** mark.passler@akerman.com  
**Subject:** CafeX v. AWS

Dear Justin,

Continuing our discussion of the briefing schedule, we expect to have the filing of our preliminary injunction papers done this afternoon, to be shortly followed by an email to you where you can download the papers.

You last briefing proposal would give AWS 18 or 19 days for opposition papers, CafeX 2 or 3 days for a reply, and the Court about 1 day to read the papers after briefing is complete. We don't believe that schedule is fair, and it does not give the Court sufficient time to consider the papers. Our counterproposal is:

Opening papers: March 2

Opposition papers: March 15

Reply papers: March 21

That provides AWS with 13 calendar days for opposition papers, CaféX with 6 calendar days for a reply, and gives the Court 3 days to read the papers before the March 24 hearing.

Please let us know if AWS agrees to this compromise.

Very truly yours,  
David

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